

General Information Letter: Subtraction modification for disability payments.

March 6, 1998

Dear:

This is in response to your letter dated February 13, 1998, in which you request a General Information Letter. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the information you have provided requires that we respond with a general information letter.

In your request you stated:

I am confused and I hope you can help me and my mother. It has to do with the subtractability (deductibility) of annuities or annuity payments that are received. My mother has several single pay deferred annuity contracts with a life insurance company that were to begin paying at the time of her retirement. She receives monthly annuity payments on one contract of which some is taxable by IRS and the rest was my mother's contribution (not taxable). Another annuity contract pays lump sums and is taxed by IRS because it is all interest at this point.

I have gotten conflicting answers when I call the tax assistance number 1-800-732-8866. One assistant tells me all annuities are subtractable. Another one asked a supervisor and said no they aren't and that the question has never come up in all his years. A third gave me this address so I could ask you since she told me they are subtractable and I still doubted.

If you can tell me they are subtractable, please explain to me why Illinois would allow taxpayers (retired ones) the benefit of deducting all that interest from being taxed. The IRS & Federal government aren't so kind.

If the IRS taxable portion of annuities is also taxable by Illinois some clarification seems to be needed to those that answer taxpayer questions since I have been told annuities are not taxable in Illinois.

I hope I have given you enough information and details.

Department Analysis

The basic rule in Illinois concerning annuities is found at Section 203 of the Illinois Income Tax Act ("IITA"), which states in pertinent part:

Sec. 203. Base Income Defined.

(a) Individuals.

(1) In general. In the case of an individual, base income means an amount equal to the taxpayer's adjusted gross income for the taxable year as modified by paragraph (2).

(2) Modifications. The adjusted gross income referred to in paragraph (1) shall be modified by adding thereto the sum of the following amounts:

and by deducting from the total so obtained the sum of the following amounts:

(F) An amount equal to all amounts included in such total pursuant to the provisions of Sections 402(a), 402(c), 403(a), 403(b), 406(a), 407(a), and 408 of the Internal Revenue Code, or included in such total as distributions under the provisions of any retirement or disability plan for employees of any governmental agency or unit, or retirement payments to retired partners, which payments are excluded in computing net earnings from self employment by Section 1402 of the Internal Revenue Code and regulations adopted pursuant thereto;

(Q) An amount equal to any amounts included in such total, received by the taxpayer as an acceleration in the payment of life, endowment or annuity benefits in advance of the time they would otherwise be payable as an indemnity for a terminal illness;

These provisions from the IITA generally concern payments from retirement plans provided by one's employer. In your letter you do not state whether the life insurance annuities were purchased by your mother's employer as part of a qualified retirement plan. If they were, they would be deductible. If the annuities were not purchased by your mother's employer, they would not be deductible.

In addition, any payments which the federal government considered deductible in the computation of your adjusted gross income would be deductible for Illinois purposes.

I hope that this has been helpful to you and I apologize for any inconvenience resulting from your inquiries at taxpayer assistance. If you have additional questions please feel free to contact me at the above address.

Sincerely,

Charles E. Matoesian
Staff Attorney (Income Tax)